

STATE LEGISLATIVE FACT SHEET

January 2000

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.08 BAC ILLEGAL PER SE LEVEL

It is illegal per se to drive a motor vehicle with a blood alcohol concentration (BAC) at or above a specified level in all but two states in the U.S. The customary level in most states has been 0.10 for drivers aged 21 and above, although 17 states and the District of Colombia now have set a lower level of .08. In a 1992 Report to Congress, NHTSA recommended that all states lower their illegal per se level to .08 for all drivers 21 years of age and above.

In 1998, President Clinton directed the Secretary of Transportation to work with Congress, other Federal agencies, the states, and other concerned safety groups to develop a plan to promote the adoption of a .08 BAC legal limit, at or above which it is unlawful per se to drive a motor vehicle. NHTSA, as the lead agency in developing the plan, solicited input from Congress, other Federal agencies, the states, and safety groups. The plan is presented in the publication *Presidential Initiative for Making .08 BAC the National Legal Limit*.

In 1998, as part of the Transportation Equity Act for the 21st Century (TEA-21), a new Federal incentive grant program was created to encourage states to adopt a .08 BAC illegal per se level.

Key Facts

- In 1998, 38 percent of the 41,471 motor vehicle deaths were alcohol-related. This translates to 15,935 alcohol-related motor vehicle deaths in that year and represents an average of one alcohol-related fatality every 33 minutes.
- Over 80 percent of drivers involved in fatal crashes with positive tests for alcohol had levels exceeding .08 BAC.
- An average male weighing 170 pounds must consume more than four beers within one hour on an empty stomach to reach a .08 BAC level.
- An analysis by NHTSA of five states that lowered the BAC limit to .08 showed that significant decreases in alcohol-related fatal crashes occurred in four out of the five states after the .08 law was adopted.
- Another study by Boston University concluded that if all states adopted .08 illegal blood alcohol limits, at least 500 to 600 fewer fatal crashes would occur annually.
- Two recent national analyses of the impact of .08 laws concluded that these laws are effective in reducing alcohol-related fatalities, especially in conjunction with administrative license revocation laws. Another study of the effects of .08 BAC in North Carolina found no clear effect of the law but the majority of outcomes were directionally consistent with such an effect over and above the steady decline in alcohol-related fatalities that began before the .08 law was enacted.



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- The .08 limit is reasonable and has the potential for saving hundreds of lives and reducing thousands of serious injuries each year on the highways if implemented by all states.

Why .08?

Virtually all drivers are substantially impaired at .08 BAC. Laboratory and test-track research shows that the vast majority of drivers, even experienced drinkers, are impaired at .08 with regard to critical driving skills. Braking, steering, lane changing, judgment, and divided attention, among other measures, are all affected significantly at .08 BAC. Performance decrements in some of these tasks are as high as 60-70 percent at .08 BAC, according to studies.

The risk of being involved in a crash increases substantially by .08 BAC. The risk of being in a crash gradually increases at each BAC level, but rises rapidly once a driver reaches or exceeds .08 BAC compared to drivers with no alcohol in their blood systems. A recent study indicates that the relative risk of being killed in a single vehicle crash at BAC's between .08 and .099 is anywhere from 11 to 52 times that of drivers at 0.00 BAC (no alcohol).

Lowering the per se limit is a proven effective counter-measure which will reduce alcohol-related traffic fatalities, especially when combined with an administrative license revocation (ALR) law. There was a 12 percent reduction in alcohol-related fatalities in California in 1990, the year .08 and an administrative license revocation law went into effect. The decrease in alcohol-related fatalities occurred at both high and low BAC levels, including even drivers with BACs of 0.20 or greater. A study at Boston University showed that states adopting .08 laws experienced 16 percent and 18 percent post-law declines in the proportions of fatal crashes involving fatally injured drivers while BAC levels were .08 or higher and 0.15 or higher, respectively. Two recent national analyses concluded that .08 laws have reduced alcohol related fatalities in several states that have adopted them. One of the studies estimated that 275 lives were saved in 1997 in states with .08 laws. An additional 590 lives could have been saved in 1997 if all states had adopted .08 laws.

A BAC level of .08 is reasonable. Studies show that the average 170-pound male would have to consume more than four beers within one hour on an empty stomach to reach .08 BAC. The average 137-pound female would need to consume three beers within one hour on an empty stomach to reach that level. Typically, that female driver would need four beers over a two hour period to reach or

exceed .08 BAC, and the male would need five beers. If they are eating, it would take even more drinks to reach .08 BAC.

The public supports a .08 BAC level. Surveys conducted by NHTSA show that most people would not drive after consuming two or three drinks in an hour. Most other industrialized nations have set BAC limits at .08 or lower and have had these laws in effect for many years. For example, Canada, Great Britain, Austria, and Switzerland have in effect .08 illegal per se laws. Norway, France and Australia have 0.05 BAC illegal per se laws, while Sweden is at 0.02 BAC.

Point-Counterpoint

States considering .08 legislation should review all the facts, including the rationale behind .08 and the potential impact on alcohol-related deaths. Opposition to .08 legislation generally includes the following claims:

- **Point:** .08 legislation will not affect high BAC problem-drinker drivers.
- **Counterpoint:** .08 legislation combined with ALR is associated with a reduction in the proportion of fatally injured drivers who had BACs greater than or equal to 0.20 in California and with a reduction in the proportion of fatally injured drivers with BACs greater than or equal to 0.15 in a five-state study. A recent national study showed that .08 laws reduce fatal crash involvements of drivers with both low BACs and high BACs by 8%. .08 legislation lowers the bar for the amount of alcohol that is illegal in driving and sends that message to all potential drinking drivers, even those who typically reach very high BACs
- **Point:** .08 legislation is the first step in lowering the limit even further.
- **Counterpoint:** NHTSA has no plans to recommend a per se limit below .08 for adult drivers. The agency does support, however, a zero tolerance limit for drivers under the age of 21, as they may not drink alcohol legally, and a 0.04 limit for commercial drivers.
- **Point:** A .08 law will overburden the criminal justice system and the jails.
- **Counterpoint:** When California lowered its BAC limit to .08, no increases were reported in the proportion of DWI defendants pleading guilty, requesting jury trials, or appealing convictions. There was little impact on court administrators or judges. The main impact was on prosecutors' decisions concerning whether cases should be filed. Previously, DWI arrests with BACs below 0.12 typically were

allowed to plea to reduced charges. Since the limit was changed, this plea-bargain “cut off” has dropped to about 0.10 BAC.

Section 163 of the Transportation Equity Act for the 21st Century

Section 163 of the Transportation Equity Act for the 21st Century (TEA-21) created incentive grants for states enacting and enforcing a qualifying .08 BAC illegal per se law.

To be eligible for a grant under Section 163, a state’s law must meet six basic elements:

- It must apply to all drivers.
- It must set a BAC level of no more than .08.
- It must establish driving at .08 BAC as an illegal per se offense.
- It must provide for primary enforcement of the law (rather than requiring probable cause that another violation had been committed before allowing enforcement of the .08 BAC law).
- It must apply to the criminal code and, in states with administrative license revocation (ALR) laws, to the ALR law as well.
- It must be deemed to be equivalent to the state’s standard “driving while intoxicated” offense.

Section 163 Incentive Grant Terms

Grant funds can be used for highway safety and highway construction projects. No state matching funds are required for these grants.

A total of \$500 million has been authorized for this grant program: \$55 million in FY 1998, \$65 million in FY 1999, \$80 million in FY 2000, \$90 million in FY 2001, \$100 million in FY 2002, and \$110 million in FY 2003.

Who Supports .08?

- AAA
- Advocates for Highway and Auto Safety
- Allstate Insurance
- American Alliance for Rights and Responsibilities
- American Association for the Surgery of Trauma
- American Association of Motor Vehicle Administrators
- American Association of Neurological Surgeons
- American Automobile Manufacturers Association
- American Coalition for Traffic Safety
- American Insurance Association
- American Medical Association
- American Spinal Injury Association
- American Trucking Associations
- Association for the Advancement of Automotive

Medicine

- American Spinal Injury Association
- Center for Substance Abuse Prevention
- Daimler Chrysler Corporation
- Emergency Nurses Association/Emergency Nurses CARE
- Federal Highway Administration
- Ford Motor Corporation
- General Motors Corporation
- Insurance Information Institute
- International Association of Chiefs of Police
- Insurance Institute for Highway Safety
- Kemper Insurance Group
- Mothers Against Drunk Driving (MADD)
- National Alcohol Beverage Control Association
- National Commission Against Drunk Driving
- National Committee on Uniform Traffic Laws and Ordinances
- National District Attorneys Association
- National Highway Traffic Safety Administration
- National Institute on Alcoholism and Alcohol Abuse
- National Sheriffs’ Association
- Nationwide Insurance
- Remove Intoxicated Drivers (RID)
- Operation Lifesaver
- Students Against Destructive Decisions (SADD)
- U.S. Department of Justice
- USAA Insurance
- U.S. Surgeon General

Information Sources

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The Impact of Lowering Illegal BAC Limit to .08 in Five States in the U.S. Johnson, Delmas and James Fell, NHTSA, 39th AAAM Proceedings, 1995.

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808 892.

Evaluation of the Effects of North Carolina's .08% BAC Law, by Robert Foss, J.Richard Stewart, and Dadd W. Reinfurt, Highway Safety Research Center, University of North Carolina, for the National Highway Traffic Safety Administration, March, 1999, Report Number DOT HS 823

Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10 Percent, by Jack W. Stuster and Marcelline Burns, Anacapa Sciences, Santa Barbara, CA, for the National Highway Traffic Safety Administration, August 1998, DOT HS 808 839

Effectiveness of State .08 Blood Alcohol Laws, General Accounting Office (GAO) Report to Congressional Committees, June 1999, GAO/RCED-99-179.

A Review of the Scientific Literature Regarding the Effects of Alcohol on Driving-Related Behavior at Blood Alcohol Concentration of 80mg/dl and Lower, by Herbert Moskowitz and Dany Fiorentino, Southern California Research Institute, for the National Highway Traffic Safety Administration, 1999, in press.

Alcohol-Related Relative Risk of Driver Fatalities and Driver Involvement in Fatal Crashes in Relation to Age and Sex: An Update Using 1996 Data, by Paul Zador and Sheila Krawchuk of Westat, Inc, and Robert B. Voas of Pacific Institute for Research and Evaluation, May 1999, in press.

Driver Characteristics and Impairment at Various BACs, by Herbert Moskowitz et al., Southern California Research Institute, for National Highway Traffic Safety

Administration, 1999, in press.

These reports and additional information are available from your State Highway Safety Office, the NHTSA Regional Office serving your state, or from NHTSA Headquarters, Traffic Safety Programs, ATTN: NTS-11, 400 Seventh Street, S.W., Washington, DC 20590; 202-366-9588.